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6 Attorneys for Plaintiff CHRISTOPHER RAMOS, as an individual, and on behalf of all others
7 similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 CHRISTOPHER RAMOS, as an individual, and
11 on behalf of all others similarly situated,

12 PLAINTIFF,

13
14 v.
15

16 POURING WITH HEART, LLC, a Delaware
17 limited liability company; HOSTING WITH
18 HEART, LLC, a California limited liability
19 company; LA BREA HISTORIC RESTAURANT,
20 LLC, a California limited liability company; 75 1/2
RAINEY STREET LLC dba HALF STEP, a Texas
21 limited liability company; and DOES 1 through
22 100, inclusive,

23 DEFENDANTS.
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27
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Case No.: 22STCV05070

*Assigned for all purposes to Hon. Maren
Nelson, Dept. 17*

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Date Filed: February 09, 2022
Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement”
2 or “Agreement” or “Settlement Agreement”) is made by and between Plaintiff CHRISTOPHER
3 RAMOS (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, on one
4 hand; and Defendants POURING WITH HEART, LLC (“PWH”), HOSTING WITH HEART,
5 LLC (“HWH”), LA BREA HISTORIC RESTAURANT, LLC (“La Brea”), and 75 1/2 RAINEY
6 STREET LLC, dba HALF STEP (“Half Step,” collectively with PWH, HWH, and La Brea,
7 “Defendants”), on the other hand, in the lawsuit entitled *Ramos v. Pouring With Heart, LLC., et*
8 *al.*, filed in Los Angeles County Superior Court, Case No. 22STCV05070 (the “Action”). Plaintiff
9 and Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is
10 intended by the Parties to fully, finally and forever resolve the claims as set forth herein, based
11 upon and subject to the terms and conditions of this Agreement.

12 **1. DEFINITIONS**

13 **A. “Action” or “Class Action”** means the class action lawsuit, entitled as *Ramos v.*
14 *Pouring With Heart, LLC., et al.*, filed in Los Angeles County Superior Court, Case No.
15 22STCV05070.

16 **B. “Aggrieved Employees”** means Class Members working during the PAGA Period
17 as non-exempt, hourly-paid employees.

18 **C. “Class Counsel”** means: Kyle Todd, Esq. and Rex Phillips of the Kyle Todd, P.C.
19 law firm. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s
20 Counsel.”

21 **D. “Class Period” or “Settlement Period”** means the period from February 9, 2018
22 through the date the Court in the Action grants Preliminary Approval of the Settlement.

23 **E. “Class Notice”** means and refers to the notice sent to Class Members after
24 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
25 Agreement.

26 **F. “Court”** means the Superior Court of the State of California for the County of Los
27 Angeles.

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1 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
2 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
3 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
4 have been filed, the date on which they have been resolved or exhausted.

5 **H. “Defendants”** means, collectively, Pouring With Heart, LLC (“PWH”), Hosting
6 With Heart, LLC (“HWH”), La Brea Historic Restaurant, LLC (“La Brea”), and 75 1/2 Rainey
7 Street LLC, dba Half Step (“Half Step”).

8 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on the
9 wage portions of the Individual Settlement Payments under the Federal Insurance Contributions
10 Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions
11 required of employers, such as for unemployment insurance.

12 **J. “Gross Fund Value”** means a non-reversionary fund in the sum of Four Hundred
13 Fifty Thousand Dollars and Zero Cents (\$450,000.00), which shall be paid by Defendants, from
14 which all payments for the Individual Settlement Payments to Participating Class Members, the
15 Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses to
16 Class Counsel, Settlement Administration Costs, the Incentive Award, the PAGA Payment, and
17 the LWDA Payment shall be paid. It expressly excludes Employer Taxes, which shall be paid by
18 Defendants separate, apart, and in addition to the Gross Settlement Amount.

19 **K. “Incentive Award”** means monetary amounts to be paid to Plaintiff of up to Ten
20 Thousand Dollars and Zero Cents (\$10,000.00), which, subject to Court approval, will be paid out
21 of the Gross Fund Value.

22 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
23 for his or her share of the PAGA Payment, which may be in addition to his or her Individual
24 Settlement Share whether or not he or she is also a Participating Class Member.

25 **M. “Individual Settlement Payment”** means a payment to a Participating Class
26 Member of his or her net share of the Net Settlement Amount.

27 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
28 Amount that a Participating Class Member is projected to receive based on the number of

1 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
2 shall be reflected in his or her Class Notice.

3 **O. “LWDA Payment”** means the payment to the State of California Labor and
4 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
5 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross Fund
6 Value. The Parties have agreed that Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be
7 allocated toward PAGA penalties, of which Seven Thousand Five Hundred Dollars and Zero Cents
8 (\$7,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Two Thousand Five Hundred
9 Dollars and Zero Cents (\$2,500.00) will be paid to Aggrieved Employees on a *pro rata* basis based
10 on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in California in
11 the PAGA Period (*i.e.* the PAGA Payment).

12 **P. “Net Settlement Amount”** means the portion of the Gross Fund Value that is
13 available for distribution to the Participating Class Members after deductions for the Court-
14 approved allocations for Settlement Administration Costs, an Incentive Award to Plaintiff, an
15 award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the
16 LWDA Payment, and the PAGA Payment.

17 **Q. “Operative Complaint” or “Complaint”** means the First Amended Complaint
18 filed with the Court.

19 **R. “PAGA Payment** is the 25% portion of the Ten Thousand Dollars and Zero Cents
20 (\$10,000.00) that is allocated toward PAGA penalties (Two Thousand Five Hundred Dollars and
21 Zero Cents (\$2,500.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
22 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
23 which would be in addition to their Individual Settlement Payment if they are Participating Class
24 Members, as well.

25 **S. “PAGA Period”** means the period from January 19, 2021, through the date the
26 Court in the Action grants Preliminary Approval of this settlement.

27 **T. “Participating Class Members”** means all Settlement Class Members who do not
28 submit a timely and valid Request for Exclusion.

1 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
2 Settlement Amount that a Participating Class Member is eligible to receive based on the number
3 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
4 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
5 may be entitled if he or she is also an Aggrieved Employee.

6 **V. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to Plaintiff
7 Christopher Ramos.

8 **W. “Preliminary Approval Date”** means the date on which the Court enters an Order
9 granting preliminary approval of the Settlement.

10 **X. “Released Parties”** shall mean Defendants, its affiliates, parents, subsidiaries,
11 officers, directors, shareholders, employees (both current and former), and managing agents.

12 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
13 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator,
14 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
15 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such
16 an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-
17 five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark
18 a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
19 exclusive means for determining whether a Request for Exclusion, Objection or Workweek Dispute
20 was submitted by the Response Deadline.

21 **Z. “Request for Exclusion”** means a written request to be excluded from the
22 Settlement Class pursuant to Paragraph 9(C) below.

23 **AA. “Settlement Administration Costs”** means all costs incurred by the Settlement
24 Administrator in administration of the Settlement, including, but not limited to, translating the
25 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
26 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
27 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
28 withholdings, providing declarations, generating Individual Settlement Payment checks and related

1 tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment
2 to Class Counsel for the Court-approved amounts for attorneys' fees and reimbursement of
3 litigation costs and expenses, to Plaintiff for his Incentive Award, and to the LWDA for the LWDA
4 Payment, providing weekly reports of opt-outs, objections and related information, and any other
5 actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of
6 this Agreement. The Settlement Administration Costs are estimated not to exceed \$7,950.00. If the
7 actual amount of the Settlement Administration Costs is less than \$7,950.00, the difference between
8 \$7,950.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement
9 Amount. If the Settlement Administration Costs exceed \$7,950.00, then such excess will be paid
10 solely from the Gross Fund Value and Defendants will not be responsible for paying any additional
11 funds in order to pay these additional costs.

12 **BB. "Settlement Administrator"** means the Third-Party Administrator mutually
13 agreed upon by the Parties that will be responsible for the administration of the Settlement
14 including, without limitation, translating the Class Notice in Spanish, the distribution of the
15 Individual Settlement Payments to be made by Defendants from the Gross Fund Value and related
16 matters under this Agreement.

17 **CC. "Settlement Class," "Settlement Class Members" or "Class Members"** means
18 all persons currently or formerly employed by Defendants as non-exempt, hourly-paid employees
19 in the State of California during the Settlement Period or Class Period. The Settlement Class shall
20 exclude all managers and supervisors that were classified as non-exempt, hourly-paid employees.

21 **DD. "Workweeks"** means the number of weeks that a Settlement Class Member was
22 employed by the Defendants in a non-exempt, hourly position during the Class Period in California,
23 based on hire dates, re-hire dates (as applicable), and termination dates (as applicable), maintained
24 by Defendants and provided by Defendants to the Settlement Administrator.

25 **2. BACKGROUND**

26 **A.** On January 19, 2022, Plaintiff filed with the State of California Labor and
27 Workforce Development Agency ("LWDA") and served on Defendants a notice under Labor Code
28 section 2699.3, stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties,

1 on behalf of Aggrieved Employees, for alleged Labor Code violations (“PAGA Notice”).

2 **B.** On February 9, 2022, Plaintiff filed a class action complaint in the Los Angeles
3 Superior Court, entitled as *Ramos v. Pouring With Heart, LLC, et al.*, Case Number 22STCV05070,
4 against Defendants alleging, among other things, claims for: (1) failure to pay meal and rest period
5 compensation; (2) waiting time penalties; (3) failure to pay all wages by the appropriate pay period;
6 (4) failure to provide accurate itemized wage statements; (5) failure to pay all accrued sick days;
7 and (6) unfair business practices (the “Class Action”).

8 **C.** On March 28, 2022, after sixty-five (65) days passed without any communication
9 from the LWDA, Plaintiff filed a First Amended Complaint to the Action, adding a cause of action
10 for civil penalties under Labor Code sections 98.6, 201, 202, 203, 204, 210, 218.5, 226, 226(a),
11 226.3, 226.7, 233, 246, 512, 558, 558.1, 1174, 1174.5, 1198, 1199 and 2699 in connection with the
12 allegations made in the PAGA Notice.

13 **D.** In September 2022, Plaintiff propounded class-wide discovery, and on November
14 15, 2022, received initial responses. Thereafter, the Parties agreed to stay motion practice over
15 further responses, and agreed to exchange informal discovery and attend an early mediation, in
16 which Defendants agreed to provide Plaintiff with, among other things: (1) time and payroll
17 records for 25% of the estimated 400 Class Members; (2) class data points, including rates of pay,
18 hire dates, and termination dates; (3) all policy documents, including any applicable handbooks;
19 and (4) all documents concerning Plaintiff in Defendants’ custody, possession, or control.

20 **E.** On January 24, 2023, Plaintiff and Defendants (collectively the “Parties”) attended
21 a full-day mediation before the Hon. Daniel Buckley (Ret.), a well-regarded mediator experienced
22 in mediating complex labor and employment matters, to see if the matter could be resolved. The
23 mediation resulted in the principle elements of this Agreement.

24 **F.** Class Counsel has conducted significant investigation of the law and facts relating
25 to the claims asserted in the Action, and has concluded that the Settlement set forth herein is fair,
26 reasonable, adequate and in the best interests of the Settlement Class, taking into account the
27 sharply contested issues involved, the expense and time necessary to litigate the Action through
28 trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse

1 outcome, the uncertainties of complex litigation, the information learned through informal
2 discovery regarding Plaintiff's allegations, and the substantial benefits to be received by Settlement
3 Class Members. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set
4 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot*
5 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

6 **G.** Defendants have concluded that, because of the substantial expense of defending
7 against the Action, the length of time necessary to resolve the issues presented herein, the
8 inconvenience involved and the concomitant disruption to its business operations, it is in its best
9 interest to accept the terms of this Agreement. Defendants deny each of the allegations and claims
10 asserted against it in the Action. However, Defendants nevertheless desire to settle the Action for
11 the purpose of avoiding the burden, expense and uncertainty of continuing litigation, and for the
12 purpose of putting to rest the controversies engendered by the Action.

13 **H.** The Court has not granted Class Certification.

14 **I.** This Agreement is intended to and does effectuate the full, final and complete
15 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all PAGA
16 Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California and
17 Aggrieved Employees.

18 **J.** The Parties, Class Counsel and Defendants' Counsel represent that they are not
19 aware of any other pending matter or action asserting claims that will be extinguished or affected
20 by the Settlement.

21 **3. JURISDICTION**

22 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
23 includes claims that, if proven, would authorize the Court to grant relief pursuant to the applicable
24 statutes. After the Court has granted Final Approval of the Settlement and entered judgment, the
25 Court shall retain jurisdiction over the Parties to enforce the terms of the judgment pursuant to
26 California Rule of Court, rule 3.769, subdivision (h).

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1 **4. STIPULATION OF CLASS CERTIFICATION**

2 The Parties stipulate to the certification of the Settlement Class under this Agreement for
3 purposes of settlement only. If the Court does not grant both Preliminary and Final Approval of the
4 Class Action Settlement, the parties will not stipulate to Class Certification and this settlement
5 stipulation will have no legal effect.

6 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

7 After full execution of this Agreement, Plaintiff will move for an order granting preliminary
8 approval of the Settlement, approving and directing the mailing of the proposed Notice of Class
9 Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally certifying the
10 Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties
11 for the submission of Requests for Exclusion, Workweek Disputes and Objections. If and when the
12 Court preliminarily approves the Settlement, and after administration of the Class Notice in a
13 manner consistent with the Court’s Preliminary Approval Order, Plaintiffs will move for an order
14 finally approving the Settlement and seek entry of a Judgment in line with this Settlement. The
15 Parties may both respond to any Objections lodged to final approval of the Settlement up to five
16 (5) court days before the Final Approval Hearing.

17 **6. STATEMENT OF NO ADMISSION**

18 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff and
19 the Settlement Class with respect to any claims or allegations asserted in the Action. This
20 Agreement shall not be deemed an admission by Defendants of any claims or allegations asserted
21 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not approved
22 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will
23 not be deemed to have waived, limited or affected in any way any claims, rights or remedies, or
24 defenses in the Action, and Defendants will not be deemed to have waived, limited or affected in
25 any way any of their objections or defenses in the Action. Payment of wages does not extend or
26 alter the Class Member’s period of employment for any purpose. The Parties shall be restored to
27 their respective positions in the Action prior to the entry of this Settlement.

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1 **7. RELEASE OF CLAIMS**

2 **A. Release by All Participating Class Members.**

3 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
4 of Judgment and payment by Defendants to the Settlement Administrator of the full Gross Fund
5 Value and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and all Participating
6 Class Members release all claims, rights, demands, damages, liabilities and causes of action,
7 contingent or vested, in law or in equity, arising at any time during the Settlement Period for the
8 claims against the Released Parties asserted in the Operative Complaint filed in the Action, or any
9 and all claims that may be asserted against the Released Parties based on the factual allegations in
10 the Operative Complaint, as follows: For the duration of the Class Period, the release includes, for
11 Participating Class Members: (1) all claims for failure to pay meal and rest period premium
12 compensation; (2) all claims for waiting time penalties; (3) all claims for failure to pay wages by
13 the appropriate pay period; (4) all claims for failure to provide accurate itemized wage statements;
14 (5) all claims for failure to pay all accrued sick days; and (6) all claims for unfair business practices
15 asserted through California Business & Professions Code section 17200, *et seq.* arising out of the
16 Labor Code violations referenced in the Operative Complaint (the "Class Released Claims"),
17 including but not limited to California Labor Code §§ 203, 204, 226, 226.7, 233, and 512; and
18 California Business and Professions Code § 17200, *et seq.*

19 **B. Release by All Aggrieved Employees**

20 For Aggrieved Employees, whether or not they opt-out, and, to the extent permitted by law,
21 the State of California, the release includes for the duration of the PAGA Period, all claims for
22 PAGA civil penalties asserted in the PAGA Notice and the PAGA Action, and thereafter alleged
23 in the Operative Complaint, or that reasonably could have been based on the factual allegations in
24 the PAGA Notice and thereafter in the Operative Complaint, including civil penalties pursuant to
25 Labor Code sections 98.6, 201, 202, 203, 204, 210, 218.5, 226, 226(a), 226.3, 226.7, 233, 246, 512,
26 558, 558.1, 1174, 1174.5, 1198, 1199 and 2699, among others (the "PAGA Released Claims").
27 The Class Released Claims and PAGA Released Claims shall be referred to herein as the "Released
28 Claims".

1 The releases above expressly exclude all other claims, including claims for vested benefits,
2 wrongful termination, unemployment insurance, disability, social security, workers'
3 compensation, and any other claims outside of the Class Released Claims of Participating Class
4 Members arising during the Class Period and the PAGA Released Claims of Aggrieved Employees
5 (and, to the extent permitted by law, the State of California) arising outside of the PAGA Period.

6 **C. Plaintiff's Separate Release**

7 Plaintiff Christopher Ramos has separately effected a separate, unrelated settlement in his
8 individual Fair Employment and Housing Act (FEHA) case. The terms of that agreement make
9 clear it is entirely separate from the instant settlement. That agreement provides for payment of
10 \$75,000 to plaintiff for release of his FEHA claims in that separate case.

11 **8. ESCALATOR PROVISION**

12 At the time of the Parties' January 24, 2023, mediation, Defendants represented that the
13 Settlement Class consisted of approximately 424 Class Members that worked a total of
14 approximately 33,492 Workweeks during the Class Period. In the event it is determined that the
15 actual number of Workweeks in the Class Period exceeds 33,492 by more than ten percent (10%),
16 then the Gross Fund Value shall be increased proportionally by the same number of percentage
17 points above the 10% buffer. For instance, a 12% increase in the number of Workweeks for the
18 Class Period would result in a 2% increase in the Gross Fund Value.

19 **9. SETTLEMENT ADMINISTRATOR**

20 **A.** Plaintiff and Defendants, through their respective counsel, have selected Phoenix
21 Class Action Administrators to administer the Settlement, which includes, but is not limited to,
22 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
23 Notice, and calculating all amounts to be paid from the Gross Fund Value. Charges and expenses
24 of the Settlement Administrator, currently estimated to be \$7,950.00, will be paid from the Gross
25 Fund Value. If the actual amount of the Settlement Administration Costs is less than \$7,950.00, the
26 difference between \$7,950.00 and the actual Settlement Administration Costs shall be a part of the
27 Net Settlement Amount. If the Settlement Administration Costs exceed \$7,950.00, then such excess
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will be paid solely from the Gross Fund Value and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

10. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION
PROCESS

A. Notice to the Settlement Class Members

(1) Within fourteen (14) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendants' possession, custody or control; (3) last known telephone number(s) currently in Defendants' possession, custody or control; (4) last known Social Security Number(s) in Defendants' possession, custody or control; and (5) the dates of employment (*i.e.*, hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar days or soon thereafter of receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

- (a) the Settlement Class Member's estimated Individual Settlement Payment and Individual PAGA Payment, and the basis for each;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;

- 1 (d) the proposed Settlement Administration Costs;
- 2 (e) the definition of the Settlement Class;
- 3 (f) a statement that the Court has preliminarily approved the
- 4 Settlement;
- 5 (g) how the Settlement Class Member can obtain additional
- 6 information, including contact information for Class
- 7 Counsel;
- 8 (h) information regarding opt-out and objection procedures;
- 9 (i) the date and location of the Final Approval Hearing; and
- 10 (j) that the Settlement Class Member must notify the
- 11 Settlement Administrator no later than the Response
- 12 Deadline if the Settlement Class Member disputes the
- 13 accuracy of the number of Workweeks as set forth on his
- 14 or her Class Notice (“Workweek Dispute”). If a
- 15 Settlement Class Member fails to timely dispute the
- 16 number of Workweeks attributed to him or her in
- 17 conformity with the instructions in the Class Notice, then
- 18 he or she shall be deemed to have waived any objection
- 19 to its accuracy and any claim to any additional settlement
- 20 payment based on different data.

21 (3) If a Class Notice from the initial notice mailing is returned as undeliverable,

22 the Settlement Administrator will attempt to obtain a current address for the Settlement Class

23 Member to whom the returned Class Notice had been mailed, within five (5) calendar days of

24 receipt of the returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if

25 possible, and (2) undertaking skip tracing. If the Settlement Administrator is successful in

26 obtaining a new address, it will re-mail the Class Notice to the Settlement Class Member within

27 three (3) business days. Further, any Class Notices that are returned to the Settlement

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1 Administrator with a forwarding address before the Response Deadline shall be promptly re-mailed
2 to the forwarding address affixed thereto.

3 (4) No later than seven (7) calendar days from the Response Deadline, the
4 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
5 completion of the notice process, including the number of attempts to obtain valid mailing
6 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
7 and copies of all Requests for Exclusion and Objections received by the Settlement Administrator.

8 **B. Objections.**

9 Only Participating Class Members may object to the Settlement. In order for any
10 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
11 do so by mailing a written objection to the Settlement Administrator at the address or phone number
12 provided on the Class Notice no later than the Response Deadline. The Settlement Administrator
13 shall email a copy of the Objection forthwith to Class Counsel and Defendants' counsel and attach
14 copies of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall
15 file in support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing:
16 (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
17 Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to
18 appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with whatever
19 legal authority, if any, the Objector asserts in support of the Objection. If a Settlement Class
20 Member objects to the Settlement, the Settlement Class Member will remain a member of the
21 Settlement Class and if the Court approves this Agreement, the Settlement Class Member will be
22 bound by the terms of the Settlement in the same way and to the same extent as a Settlement Class
23 Member who does not object. The date of mailing of the Class Notice to the objecting Settlement
24 Class Member shall be conclusively determined according to the records of the Settlement
25 Administrator. Settlement Class Members need not object in writing to be heard at the Final
26 Approval Hearing; they may object or comment in person at the hearing at their own expense.
27 Class Counsel and Defendants' Counsel may respond to any objection lodged with the Court up to
28 five (5) court days before the Final Approval Hearing.

1 **C. Requesting Exclusion**

2 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
3 Settlement by mailing a written request to be excluded from the Settlement (“Request for
4 Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline. To
5 be valid, a Request for Exclusion must include: (1) the Class Member’s name; (2) the last four (4)
6 digits of the Class Member’s Social Security Number; (3) the Class Member’s signature; and (4)
7 the following statement: “Please exclude me from the Settlement Class in the *Ramos v. Pouring*
8 *With Heart, LLC, et al.*, matter” or any statement standing for the proposition that the Class
9 Member does not wish to participate in the Settlement. The Settlement Administrator shall
10 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendants’
11 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its declaration
12 to be provided in advance of the Final Approval Hearing. Any Settlement Class Member who
13 requests exclusion using this procedure will not be entitled to receive any payment from the
14 Settlement and will not be bound by the Settlement Agreement or have any right to object to,
15 appeal, or comment on the Settlement. Any Settlement Class Member who does not opt out of the
16 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
17 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
18 may be entered by the Court if Final Approval of the Settlement is granted. A Settlement Class
19 Member cannot submit both a Request for Exclusion and an objection. If a Settlement Class
20 Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control
21 and the Objection will be overruled. Settlement Class Members who worked during the PAGA
22 Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed
23 Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by
24 the release of the PAGA Released Claims.

25 **D. Disputes Regarding Settlement Class Members’ Workweek Data.**

26 Each Settlement Class Member may dispute the number of Workweeks attributed to him
27 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to the
28 Settlement Administrator by the Settlement Class Member, postmarked on or before the Response

1 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class
2 Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes
3 directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class
4 Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

5 **E. Opt-Out Contingency.**

6 If more than ten percent (10%) of the Class Members make valid Requests for Exclusion
7 from the Class Settlement, Defendants may, in their sole discretion, choose to reject or accept, and
8 be bound by or withdraw from this Agreement. Defendants shall have five (5) calendar days from
9 the date the Administrator indicates the number of Class Members who opted out of the Class
10 Settlement to inform Plaintiff's counsel in writing of its decision to exercise this option to withdraw
11 from the Agreement.

12 **11. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA**
13 **PAYMENTS**

14 Individual Settlement Payments will be calculated and distributed to Participating Class
15 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
16 Members' respective number of Workweeks during the Class Period. Individual PAGA
17 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
18 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number
19 of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement
20 Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

21 **A.** The Settlement Administrator will determine the total number of Workweeks
22 worked by each Settlement Class Member during the Class Period ("Class Member's
23 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
24 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
25 Administrator will determine the total number of Workweeks worked by each Aggrieved
26 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
27 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
28 ("PAGA Workweeks").

1 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
2 Settlement Administrator will use the following formula: Individual Settlement Share =
3 $(\text{Settlement Class Member's Workweeks} \div \text{Class Workweeks}) \times \text{Net Settlement Amount}$.

4 **C.** To determine each Participating Class Member's Participating Individual
5 Settlement Share, the Settlement Administrator will determine the aggregate number of
6 Workweeks worked by all Participating Class Members during the Class Period ("Participating
7 Class Workweeks") and use the following formula: Individual Settlement Share =
8 $(\text{Participating Class Member's Workweeks} \div \text{Participating Class Workweeks}) \times \text{Net Settlement}$
9 Amount.

10 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
11 to Participating Class Members by way of check and is referred to as "Individual Settlement
12 Payment(s)".

13 **E.** To determine each Aggrieved Employee's Individual PAGA Payment, the
14 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
15 PAGA Payment = $(\text{Aggrieved Employee's Workweeks} \div \text{PAGA Workweeks}) \times \$2,500.00$ (the
16 PAGA Payment).

17 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
18 to Participating Class Members and/or Aggrieved Employees by way of check. When a
19 Participating Class Member is also an Aggrieved Employee, one check may be issued that
20 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

21 **12. DISTRIBUTION OF PAYMENTS**

22 **A. Distribution of Individual Settlement Payments.**

23 Participating Class Members will receive an Individual Settlement Payment and
24 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement Payment
25 and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and
26 eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after
27 expiration of the 180-day period, checks for such payments shall be canceled and funds
28 associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue

1 pursuant to Code of Civil Procedure section 384 (“Unpaid Residue”). The Unpaid Residue plus
2 accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted
3 to the State Bar’s Office of Access & Inclusion - Justice Gap Fund, 180 Howard Street, San
4 Francisco, California 94105, the *cy pres* recipient, for use in Los Angeles County. The Settlement
5 Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil
6 Procedure section 384 and the report shall be presented to the Court by Class Counsel along with
7 a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure
8 section 384.

9 **B. Funding of Settlement.**

10 Defendants shall, within thirty (30) days of Final Approval Date, make payment of the
11 Gross Fund Value and Employer Taxes to the Settlement Administrator pursuant to Internal
12 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
13 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this
14 Agreement and the Court’s Orders, and subject to the conditions described herein.

15 **C. Time for Distribution.**

16 Within seven (7) calendar days after payment of the full Gross Fund Value and Employer
17 Taxes by Defendants or as soon thereafter as practicable, the Settlement Administrator shall
18 distribute all payments due from the QSA for: (1) the Incentive Award to Plaintiff as specified in
19 this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to
20 Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
21 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
22 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA
23 Payments as specified in this Agreement and approved by the Court; and (6) Individual Settlement
24 Payments to Participating Class Members, less applicable taxes and withholdings, as specified in
25 this Agreement and approved by the Court. All interest accrued shall be for the benefit of the Class
26 Members and distributed on a *pro rata* basis to Participating Class Members based on the number
27 of Workweeks worked by them in the Class Period.

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1 **13. ATTORNEYS' FEES AND LITIGATION COSTS**

2 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys' fees
3 of up to 33.3% of the Gross Settlement Amount, which amounts to One Hundred Fifty Thousand
4 Dollars and Zero Cents (\$150,000.00). Class Counsel shall further apply for, and Defendants shall
5 not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated
6 with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount
7 up to Eleven Thousand Dollars and Zero Cents (\$11,000.00). Awards of attorneys' fees and costs
8 shall be paid out of the Gross Fund Value, for all past and future attorneys' fees and costs necessary
9 to prosecute, settle and obtain Final Approval of the settlement in Action. The "future" aspect of
10 the amounts stated herein includes, without limitation, all time and expenses expended by Class
11 Counsel (including any appeals therein). There will be no additional charge of any kind to either
12 the Settlement Class Members or request for additional consideration from Defendants for such
13 work unless Defendants materially breach this Agreement, including any term regarding funding,
14 and further efforts are necessary from Class Counsel to remedy said breach, including, without
15 limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees
16 and/or litigation costs and expenses in amounts that are less than the amounts provided for herein,
17 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

18 **14. INCENTIVE AWARD TO PLAINTIFF**

19 Named Plaintiff shall seek, and Defendants shall not oppose, an Incentive Award in an
20 amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, for
21 participation in and assistance with the Action. Any Incentive Award awarded to Plaintiff shall be
22 paid from the Gross Fund Value and shall be reported on an IRS Form 1099. If the Court approves
23 the Incentive Award to Plaintiff in less than the amounts sought herein, then the unapproved
24 portion(s) shall be a part of the Net Settlement Amount.

25 **15. TAXATION AND ALLOCATION**

26 a. Each Individual Settlement Share shall be allocated as follows: 33% as wages (to
27 be reported on an IRS Form W2); and 67% as interest and penalties (to be reported on an IRS Form
28 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree

1 that the employees' share of taxes and withholdings with respect to the wage-portion of the
2 Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield
3 the Individual Settlement Payment. The amount of federal income tax withholding will be based
4 upon a flat withholding rate for supplemental wage payments in accordance with Treasury
5 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
6 be made pursuant to applicable state and/or local withholding codes or regulations.

7 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator
8 at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
9 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
10 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
11 Section may be modified in a manner to bring Defendants into compliance with any such changes.

12 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition to
13 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
14 payroll taxes as described above.

15 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
16 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
17 be relied upon as such within the meaning of United States Treasury Department Circular 230 (31
18 C.F.R. Part 10, as amended) or otherwise.

19 e. Any Incentive Award approved by the Court will result in the issuance of a Form
20 1099 to Plaintiff as a class representative, who shall assume full responsibility and liability for the
21 payment of taxes due on such award.

22 **16. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

23 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000.00) of the
24 Gross Fund Value toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of
25 the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA and twenty-five percent
26 (25%) (\$2,500.00) will be distributed to Aggrieved Employees on a *pro rata* basis based upon their
27 respective Workweeks worked as Aggrieved Employees during the PAGA Period.

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1 **17. COURT APPROVAL**

2 This Agreement is contingent upon an order by the Court granting Final Approval of the
3 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
4 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
5 shall be restored to their respective positions in the Action prior to entry of this Settlement. If this
6 Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it
7 shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the
8 Court reserves any authority to issue any appropriate orders when denying approval; and/or (b)
9 there are any terms and conditions in this Settlement Agreement specifically stated to survive the
10 Settlement Agreement being voided or not approved, and which control in such an event.

11 **18. NOTICE OF JUDGMENT**

12 In addition to any duties set out herein, the Settlement Administrator shall provide notice
13 of the Final Judgment entered in the Action by posting the same on its website for a period of no
14 less than four (4) years.

15 **19. MISCELLANEOUS PROVISIONS**

16 **A. Confidentiality Prior to Preliminary Approval.**

17 Plaintiff, Class Counsel, Defendants, and Defendants' Counsel separately agree that, until
18 the Motion for Preliminary Approval of Settlement is filed, they and each of them will not
19 disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate
20 or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally,
21 to any person, corporation, association, government agency, or other entity except: (1) to the
22 Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement
23 confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to
24 appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to
25 an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to
26 immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking
27 such information. Plaintiff, Class Counsel, Defendants and Defendants' Counsel separately agree
28 not to, directly or indirectly, initiate any conversation or other communication, before the filing

1 of the Motion for Preliminary Approval, any with third party regarding this Agreement or the
2 matters giving rise to this Agreement except to respond only that “the matter was resolved,” or
3 words to that effect. This paragraph does not restrict Class Counsel’s communications with Class
4 Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

5 **B. No Solicitation.**

6 The Parties separately agree that they and their respective counsel and employees will not
7 solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment.
8 Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate
9 with Class Members in accordance with Class Counsel’s ethical obligations owed to Class
10 Members.

11 **C. Interpretation of the Agreement.**

12 This Agreement constitutes the entire agreement between the Parties with respect to its
13 subject matter. Except as expressly provided herein, this Agreement has not been executed in
14 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
15 written representations or terms shall modify, vary or contradict its terms. In entering into this
16 Agreement, the Parties agree that this Agreement is to be construed according to its terms and may
17 not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
18 enforced under the laws of the State of California, both in its procedural and substantive aspects,
19 without regard to its conflict of law provisions. Any claim arising out of or relating to the
20 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
21 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants hereby
22 consent to the personal jurisdiction of the Court in the Action over it solely in connection therewith.
23 The foregoing is only limited to disputes concerning this Agreement. The Parties, and each of
24 them, participated in the negotiation and drafting of this Agreement and had available to them the
25 advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants may claim
26 that any ambiguity in this Agreement should be construed against the other. The Agreement may
27 be modified only by a writing signed by counsel for the Parties and approved by the Court.

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1 **D. Further Cooperation.**

2 The Parties and their respective attorneys shall proceed diligently to prepare and execute
3 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
4 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
5 will not take any action inconsistent with this Agreement, including, without limitation,
6 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
7 Party has taken actions inconsistent with the Settlement, including, without limitation, encouraging
8 Class Members to opt out of the Settlement, the Court may take any corrective actions, including
9 enjoining any Party from communicating regarding the Settlement on an *ex parte* basis, issuing (a)
10 corrective notice(s), awarding monetary, issue, evidentiary and/or terminating sanctions against
11 that Party, and/or enforcing this Agreement despite the presence of opt-outs and/or objections.

12 **E. Counterparts.**

13 The Agreement may be executed in one or more actual or non-original counterparts, all of
14 which will be considered one and the same instrument and all of which will be considered duplicate
15 originals. The Parties may use electronic signature technology to expedite the execution of this
16 Agreement pursuant to California Civil Code section 1633.7. Electronic signatures shall be deemed
17 originals.

18 **F. Authority.**

19 Each individual signing below warrants that he or she has the authority to execute this
20 Agreement on behalf of the Party for whom or which that individual signs.

21 **G. No Third-Party Beneficiaries.**

22 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
23 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
24 party beneficiaries.

25 **H. Deadlines Falling on Weekends or Holidays.**

26 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
27 legal holiday, that deadline shall be continued until the following business day.

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1 Dated: April __, 2024

KYLE TODD, P.C.

2
3 By: _____

4 KYLE TODD

5 REX PHILLIPS

Attorneys for Plaintiff CHRISTOPHER RAMOS

6 Dated: April 17, 2024

FISHER & PHILLIPS LLP

7
8 By:  _____

9 NATHAN V. OKELBERRY

10 DREW M. TATE

11 Attorneys for Defendants POURING WITH
12 HEART, LLC, HOSTING WITH HEART, LLC,
13 LA BREA HISTORIC RESTAURANT, LLC, 75
14 ½ RAINEY STREET, LLC DBA HALF STEP
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